

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

FRANK L. TONINI,

Defendant.

4:15-CR-3132

PRELIMINARY ORDER OF
FORFEITURE

This matter is before the Court on the plaintiff's Motion for Preliminary Order of Forfeiture (filing 27). Count II of the indictment in this case (filing 1) charged the defendant with knowingly possessing or attempting to possess one or more items which contained visual depictions of minors engaged in sexually explicit conduct, in violation of 18 U.S.C. § 2252(a)(4)(B). The indictment also contained a forfeiture allegation seeking the forfeiture, pursuant to 18 U.S.C. § 2253, of:

1. Dell computer model XPS400, serial number 5JX2HB 1
2. Kyocera phone
3. Samsung hard drive, serial number 5246J9FC426231
4. Samsung hard drive, serial number 509QJHL706800

on the basis that they were used or was intended to be used to facilitate the violation alleged in Count II. Filing 1.

The defendant has pleaded guilty to Count II of the indictment. He has also admitted the forfeiture allegation as to the Dell computer and the two Samsung hard drives, but not as to the Kyocera phone. Filing 26 at 18–22. By virtue of pleading guilty to the charge and admitting the forfeiture allegation, the defendant has forfeited his interest in the Dell computer and two Samsung hard drives, and the plaintiff should be entitled to possession of that property pursuant to 18 U.S.C. § 2253. However, because the defendant denied the forfeiture allegation as to the Kyocera phone, he has not forfeited his interest in it. Accordingly, the plaintiff's Motion for Preliminary Order of Forfeiture is granted in part and denied in part.

IT IS ORDERED:

1. The plaintiff's Motion for Preliminary Order of Forfeiture (filing 27) is granted as to the Dell computer model XPS400,

serial number 5JX2HB 1, Samsung hard drive, serial number 5246J9FC426231, and Samsung hard drive, serial number 509QJHL706800; and denied as to the Kyocera phone.

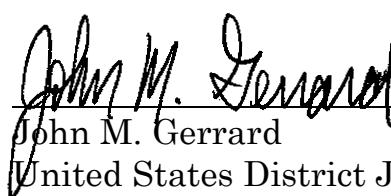
2. Based upon the defendant's guilty plea and admission of the forfeiture allegation of the indictment, the plaintiff is authorized to seize the Dell computer model XPS400, serial number 5JX2HB 1, Samsung hard drive, serial number 5246J9FC426231, and Samsung hard drive, serial number 509QJHL706800.
3. The defendant's interest in the Dell computer model XPS400, serial number 5JX2HB 1, Samsung hard drive, serial number 5246J9FC426231, and Samsung hard drive, serial number 509QJHL706800 is forfeited to the plaintiff for disposition in accordance with law, subject to the provisions of [18 U.S.C. § 2253](#) (incorporating certain provisions of [21 U.S.C. § 853](#)).
4. The Dell computer model XPS400, serial number 5JX2HB 1, Samsung hard drive, serial number 5246J9FC426231, and Samsung hard drive, serial number 509QJHL706800 are to be held by the plaintiff in its secure custody and control.
5. Pursuant to [21 U.S.C. § 853\(n\)\(1\)](#), the plaintiff shall publish for at least 30 consecutive days on an official Internet government forfeiture site (www.forfeiture.gov) notice of this order, notice of publication evidencing the plaintiff's intent to dispose of the property in such manner as the Attorney General may direct, and notice that any person, other than the defendant, having or claiming a legal interest in the property must file a petition with the Court within 30 days of the final publication of notice or of receipt of actual notice, whichever is earlier.
6. Such published notice shall state that the petition referred to in paragraph 5, above, shall be for a hearing to adjudicate the validity of the petitioner's alleged interest in the property, shall be signed by the petitioner under penalty of perjury, and shall set forth the nature and extent of the petitioner's right,

title, or interest in the property and any additional facts supporting the petitioner's claim and relief sought.

7. The plaintiff may also, to the extent practicable, provide direct written notice to any person known to have alleged an interest in the property as a substitute for published notice as to those persons so notified.
8. Upon adjudication of all third-party interests, this Court will enter a final order of forfeiture pursuant to [21 U.S.C. § 853\(n\)](#), in which all interests will be addressed.

Dated this 26th day of April, 2016.

BY THE COURT:



John M. Gerrard
United States District Judge